

MODERN AWARDS REVIEW 2023-24 (AM2023/21)

SUBMISSION COVER SHEET



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Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

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A Introduction

1. The Community and Public Sector Union has a long history of coverage of workers in the care industry mostly in state and territory public sectors. This has transferred to NGOs and privatised services in several instances in the last few years.
2. The Community and Public Sector Union (CPSU) has industrial coverage of disability and child protection workers, and school support staff covered by:
 - PSU Group – Commonwealth and Territory Governments
 - SPSF Group – State Governments
3. On 29 January 2024, the Commission published a Discussion Paper about the Work and Care Sector¹. The discussion paper poses a series of questions at the end of each chapter. This submission by the CPSU/SPSF Group addresses a number of questions.
 - a) The CPSU will direct this submission to the Social Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award) where we have coverage of disability support workers.
4. This submission focuses on the severe imbalances in the SCHADS Award.
5. The overwhelming majority of our membership under the SCHADS Award is women, with estimates that the disability workforce is 70% women².
6. The CPSU acknowledges and supports the submissions of the Australian Council of Trade Unions (the ACTU³). The following submission compliments the ACTU submission and is based on the CPSU's many decades of representing members in the disability industry.
7. It is acknowledged that many our members have caring responsibilities outside of their work.
8. Although the invitation is provided under Question 19, the CPSU acknowledges that it is a threshold issue of Coverage of the Modern Award.

B Coverage: Parties to the Award and the Disability Sector

9. The CPSU has a long history of representing members in these occupations and sectors commencing from when they were employed by the state government.
10. There are not currently parties to the modern awards. The CPSU submits that this is causing significant issues for workers in the disability sector.
11. A large proportion of our union's membership work in legacy services that were community residences or group homes, that were formerly provided by state governments. Most have been privatised to Non-Government Organisations and some for-profit providers. These workplaces will have a bare minimum of workers on any shift, with most of our membership working in group homes situated in suburban and regional communities.

¹ <https://www.fwc.gov.au/hearings-decisions/major-cases/modern-awards-review-2023-24>

² Website, National Disability Practitioners, <https://www.ndp.org.au/disability-careers/workforce-overview>

- 12.** Despite “*choice and control*” being utilised as a slogan to empower the clients, the CPSU has seen “*choice and control*” utilised against the interests of both the clients and the staff, with the NDIA creating a diminishing choice and loss of control as to what services and staff are available to clients. There are a number of mechanisms by which this occurs.
- 13.** Housing has been utilised as an investment device moving clients to cheaper housing, often further away from family and friends. This also removes the link between clients and their choice of staff in a group home or an area as travel becomes more complicated.
- 14.** Funding in the sector is often defined through assessments of the client’s needs. NDIA assessments of levels of support and criteria can result in an assessment that the client -
- accesses lower levels of care,
 - requiring diminished package
 - reduced supply of staff and staff of a lesser grade, or
 - to simply remove choice of funding to providers to pay certain conditions associated with those services in a group funding scenario by only funding certain pay points or allowances
- 15.** This creates push back to clients and also staff when trying to access the required level of services, associated pay and conditions with the service or that the service (and employment practice) is no longer permitted under the NDIA package assessments.
- 16.** As a result, the NDIA determines (not the employer), the entitlement of a worker to certain pay and conditions (by the level of funding approved?). This is often contrary to the award, causes additional disputation and often acts against the interests of the client’s choice and control.
- 17.** There is a review process under the NDIA that can take 6 months or more. This is generally not initiated by the worker and is initiated by the disability provider. Unfortunately, there are many providers who try and shift these costs onto workers through underpayments and failure to pay conditions.
- 18.** Examples where this occurs includes:
- a) Employers regularly complain to the union as the NDIA does not fully fund all SCHADS Award provisions.
 - b) Payment for administrative functions is only partially paid.
 - c) Annual Leave is an example. As expressed above, NDIA fund 4 weeks annual leave whereas with much of the disability workforce being shift workers, it means they are entitled to an extra week of annual leave. The provider either bears the cost gap, attempts to casualise its workforce, or has disputes about the nature of the shift work undertaken.
 - d) The classification structure discourages long term employment and career development. NDIA fund to Level 2.4 of SCHADS Award. Progression to Level 3 is an anomaly and not the normative experience. Experienced staff move on to higher paid work or out of industry which pays better and is more secure work.
 - e) Essentially, the funding provisions of the NDIA to providers, and the provisions of the SCHADS Award ensures there is no career path, nor does the Award acknowledge skills and expertise of employees who seek to have a career as a carer.
 - f) Block funding assessments of the need for sleepover rather than an active night shifts for

the period of the package. The NDIA does not fund active night shifts if the client is only entitled to sleepover block funding. This has no regard for changes to client behaviour, evolution of a clients disability as they age or due to other factors, incorrect assessments, or actual nocturnal behaviour of clients.

- g) Team meetings are funded for 2 hours in line with clause 10.5 minimum call out. This, however, is not enough time when there are complex medical and behavioural case issues for the clients at the workplace.
- h) NDIA funding has a direct impact on enterprise bargaining as employers are reluctant to enhance pay/conditions if the NDIA does not fund above SCHADS Award.
- i) Gaining improved conditions/pay for members is hampered when inadequate NDIA funding is the primary revenue source.
- j) When copied state awards were operative, the NDIA did not provide the additional funds to pay for the preserved state award conditions that were superior to those of the SCHADS Award by figures of tens of thousands. A number of providers attempted to “restructure out” transferred legacy workers, replace transferred workers on shift entitlements with casuals.³⁴
- k) Risk assessments of staffing requirements to manage client behaviour often do not relate to assessments of service provision from the NDIA. This puts workers at risk, as disability support providers and their line management are not able or willing to secure more funding at short notice, and cannot simply refuse service as in other industries. This causes a profound health and safety risk.
- l) CPSU is mindful that if providers have to close down for financial reasons, that our members will be out of work undermining job security. Unfortunately since the privatisation of the government providers, the CPSU has observed a number of the originally transferred providers fall into administration or merge with more established larger providers in order to maintain service to clients.

19. The assessment decisions of the NDIA in funding where there is no worker or worker representative present at the assessment who is likely to be affected by the assessment, flow onto the relationship between the provider and worker, creating disputation when the assessment is wrong or the client does not conform to the behavioural or participation expectations in the assessment.

20. The operation of NDIA funding model means that a number of the modern award objectives are not met including:

- The relative living standards and the needs of the low paid (134.1 a)
- The proliferation of insecure work (134.1 aa)
- Artificial caps on classification levels, hours of work making the sector unable to meet objective (134.1 ab)
- A sector with minimal exposure to enterprise bargaining (134 1 b)
- The discounting of additional remuneration for employees working overtime, unsocial, irregular or unpredictable hours, weekends and public holidays, and

³ Community and Public Sector Union, NSW Branch v Northcott Supported Living Limited [2021] FCA 8

⁴ CPSU, the Community and Public Sector Union v Cerebral Palsy Alliance – Accommodation Northern Sydney Ltd T/A Cerebral Palsy Alliance (C2020/2011) DEPUTY PRESIDENT BOYCE SYDNEY, 13 MAY 2021

shifts (134 .1 da)

21. Due to the historical variations of coverage across Australia, in the disability sector, it is not uncommon for contested or shared coverage of disability workers in a region, a disability service provider or even a workplace between unions. This causes issues already as employers have been known to pick which union they will consult with, whether they attempt to resolve early stage disputes with one union and not the union decided by the workers. This also causes an unnecessary escalation of dispute settlement provisions if a matter needs to be escalated to clause 9.4 before the matter is started to be resolved.
22. The CPSU submits that in the SCHADS Award at a minimum, that the Commonwealth Government through the NDIA, Registered Providers and eligible Registered Trade Unions should be party to the award. This would enable trade unions to enter into disputes and resolve disputes often without needing the assistance of the Commission.

Recommendation: The SCHADS Award be modernized to enable Parties to be listed on the award to ensure that the conditions of the award can be disputed and enforced by unions and with the employers and also the Commonwealth Government through the NDIA. The Coverage clause in 4.1 should be amended to list the NDIA and union parties.

23. In response to the Discussion Paper Questions the CPSU makes the following submissions.

Question 1

Part-time - discussion question: Are there any specific variations to part-time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

24. The CPSU submits that the issue of part time work is heightened by the NDIA funding model.
25. The notion that a client or group of clients with a profound disability in a group home, may choose to change a disability service provider, without a prospect of a replacement client is highly unlikely. With many of the clients residing in the group homes for many decades and even lifetimes. This is shifting business risk to the worker.
26. However, despite the minimum part time hours contracted, in a number of cases the providers cannot attract enough staff at the current rates of pay to work the part time hours. This leaves part time workers undertaking regular extra hours. To attract and retain staff, providers should be compelled by the Award to regularly review permanent hours available.
27. CPSU recommends that providers should be regularly proactively seeking expression of interests from Part-time employees who want to gain additional permanent hours and that there is a reverse onus to offer the employee more hours. Whilst this differs to the ACTU submission, for lesser timeframes the CPSU submits that this should be required to occur at most every three months in the disability sector.
28. Women dominate the employment in the sector. Many women have to combine and juggle multiple part time jobs and short shifts in the disability sector to make ends meet. The reliance on a modern award for almost the entire sector means poorer outcomes for women workers. This works against achieving gender equity in this sector when many workers only have a part of their weekly hours secure.
29. The CPSU submits that in order to improve gender equity in the disability sector that minimum shifts should be 4 hours and minimum weekly hours should be changed to 15 hours.
30. The CPSU recommends that Clause 10.3 of the SCHADS be amended to include:

- A proactive requirement for employer review and offer after 3 month of continuous part time work and casual work.
 - Minimum hours in a shift be amended to 4 hours
 - Minimum weekly employment under part time is 15 hours
31. Casual Employees - In addition, employers should be compelled to offer permanent hours to casual employees but the threshold period is moved from the NES to 3 months.
32. The Fair Work Act (FWA) provides for casuals to request permanency after 12 months employment from Section 66 A onwards. The CPSU proposes that these provisions with the statutory exemptions are reduced under clause 10.6 of the SCHADS Award to 3 months.
33. If the casual is working regular shifts, these shifts should be offered to be converted to permanent part time with the view to increasing to full time hours by way of review and consultation with eligible employees.
34. Employees should have choice in:
- accepting additional part time hours permanently
 - moving from casual to permanent part time.
35. In some cases employers prefer casualisation and underwork as it provides employers maximum flexibility and keeps their workforce compliant, unstable, and hungry to maximise income.
36. In some instances, employees will seek to maintain casual employment status. This is not undermined by the conversion system in the Fair Work Act.

Recommendation

That the SCHADS Award at Clause 10.3 is varied to include a 3-month threshold for proactive offer by an employer for increase in part time hours.

That the SCHADS Award at clause 10.6 is varied to include a 3-month automatic for proactive offer.

Minimum hours in a shift be amended to 4 hours

Minimum weekly employment under part time is 15 hours

2. Individual flexibility agreement – discussion question: Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

We refer to the ACTU submission.

3. Facilitative provisions - discussion question: Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

We refer to the ACTU submission.

4. Working from home - discussion question: Are there any specific variations needed in modern awards regarding working from home arrangements that are necessary to ensure they continue to meet the modern awards objective?

37. There are limited opportunities to work from home in the disability sector. Most of the clinical staff have been transferred to self -employment. However, a potential variation that

could improve the ability to work from home could be an amendment to the requirement to attend a team meeting in person , as currently the two-hour funding requires significant travel and disruption to attend the meeting.

5. A right to disconnect - discussion question: Are there any specific variations needed in modern awards regarding a right to disconnect that are necessary to ensure they continue to meet the modern awards objective? Note this question will not be dealt with due to the legislative changes in this area

38. This is being dealt with separately consequently to passing of the Fair Work (Closing Loopholes) Amendment Bill No. 2.

6. Minimum payment periods - discussion question: Are there any specific variations to the minimum payment periods for part-time employees in modern awards that are necessary to ensure they continue to meet the modern awards objective?

39. There are three areas of work in disabilities that are affected by the minimum call out period. These include:
- a) Minimum Call payment periods
 - b) Team meetings
 - c) Sleepovers
40. a) Minimum Call Payment periods: are dealt with elsewhere in this submission.
41. b) Team Meetings: payment for attendance at team meetings are paid to workers who are not on shift for two hours in a group home setting. The NDIA pays providers for only two hours for workers attendance at team meetings. Regional workers may need to travel significant distances to attend the team meeting or refuse other work. When there are complex behavioural and medical issues for the clients, team meetings have been known to take up to 4 hours. Team meetings are the medium used to update workers on the changing medical and behavioural needs of clients. Team meetings also provide a crucial mechanism for staff to be receive training.
42. The minimum time for team meetings needs to be extended to up to four hours. Regular Casuals, and Part Timers should be given an entitlement to attend team meetings, as vital safety information is often discussed in these forums.
43. As noted above a requirement not to have face-to-face attendance, may enable Work From Home, and reductions in costs for workers attending work for team meetings.
44. Insertion of the draft team meetings clause at **Annexure A** with a three hour minimum payment.
45. c) Sleepovers: are an extremely contentious issue between employer and worker representatives. Clause 25.7 of the SCHADS Award requires only minimum shift payment payment of 4 hours for adjacent hours worked plus an allowance for a further 8 hours, in what is an effective 12-hour minimum shift.
46. There are only minimal rights of refusal. The right of refusal is extremely difficult for a casualised workforce to assert who may have shifts removed from the future for refusal. This is the care sector and if there is no one else to care for the client, then you cannot abandon your post/Client.
47. Sleepover shifts are predominately tied to working a shift prior to or subsequent to, a paid shift. If a worker refuses a sleepover shift, they often must forgo a fully paid working shift. While in theory sleepover shifts are voluntary, where providers tie a sleepover to a paid shift, the worker in declining a sleepover shift potentially lose a fully paid shift as well.

48. The NDIA will often establish the need for a sleepover shift rather than an active night shift through their determination after periodic assessment of the client/s needs. This determination can take more than 6 months for the provider to rectify. There are no direct rights of the employee to modify this requirement, except with their employer, but this then becomes a shift-by-shift proposition.
49. Whilst overtime is paid for one hour for one disruption, to get additional periods of overtime requires being awoken at least four times for 15 minutes periods. This is how many employers pay workers on sleepover shifts. This has no connection to how long the worker takes to get back to sleep, the quality of the sleep or the health and safety risks of broken sleep.
50. The requirement for worker to be at the workplace, prevents the worker from working elsewhere as is common practice in the sector due to low pay and short regular shifts. It is also means that the worker I unable to participate in normal daily living activities, socialise with friends, and family, and the community.
51. Sleepovers are in direct conflict with the modern award objective. The CPSU has held the position that sleepovers should be removed from the award for several decades and has attempted through its associated state union to arbitrate for the removal of sleepovers when the NSW Government tried to introduce a clause similar to that in the SCHADS Award in the relevant state award, *New South Wales Department of Community Services Living and Residential (interim) (State) Award [2000] NSWIRComm 172 (1 September 2000)*.⁵
52. Whilst the CPSU was not successful in these proceedings , the NSW Industrial Relations Commission introduced a number of conditions to mitigate several of the negative aspects of sleepovers.
53. The CPSU is unable to reconcile how an industry made up of 70% women, where women still are responsible for the majority of caring responsibilities and under an industry without significant presence of above award enterprise agreements due to the funding model, that sleepovers meets the modern award objective.
54. The analogous provision which is in common in many awards is that of travel time, where the worker is paid at normal rates unless asked to participate in the workplace which attracts overtime. For some reason, the disadvantage of being present at work in this female dominated industry does not pay you even the minimum hourly rate.

Recommendation: CPSU recommends that the sleepover clause is removed from the SCHADS.

Recommendation: In the alternative, that if the Commission cannot see the end of this draconian clause, that the clause is amended in the manner as annexed at **Annexure B**

7. Span of hours - discussion question Are there any specific variations to span of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

55. Formerly under different rostering principles in the *Crown Employees Ageing, Disability And Home Care – NSW Department of Family and Community Services (Community Living Award) 2015*, permanent workers employed part time were able to accumulate ADO/RDOs. Under the provisions of the SCHADS Award, this becomes difficult.

⁵ *New South Wales Department of Community Services Living and Residential (interim) (State) Award [2000] NSWIRComm 172 (1 September 2000)* , the Department tried to introduce sleep over provisions similar to the SCHaDS Award into the state award.

- 56. If a worker earns ADO/RDOs, they can use these days of banked time to attend to personal matters, that they often cannot be attended to when working normal rosters.
- 57. The span of hours for day workers is 14 hours in the SCHADS Award (6am-8pm), which compared to awards in predominantly male based industries appears to be longer - Clause 25.2). This means that there is less opportunity for the majority female workforce in the disability sector to attract penalty rates and overtime, compared to their male counterparts in other industries.

Recommendation: The practical access to ADO and RDO's should be reviewed under the SCHADS award including for part time workers.

Recommendation: The span of hours should be reviewed and shortened if longer than similar provisions in male dominated industry awards.

8. Notice of rosters - discussion question Noting the Work and Care Senate Committee Recommendation 21 that all employees should have at least 2 weeks' notice of their roster except in exceptional circumstances, are there any specific variations to rostering provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

- 58. The rostering provisions of the SCHADS Award combined with the current staffing shortages, make a mockery of the notice period for rosters. Many members report that they cannot access leave for milestone events months in advance. However, clause 8A is used to modify rosters at short notice, less than the two weeks provided by clause 25.5. of the Award.
- 59. In other male dominated 24-hour roster occupations that the CPSU has coverage of, it is not unheard of to have 6 month or greater period rosters with the minimum being 4 weeks. This enables workers and employers to plan, arrange appropriate replacements and shift swaps.
- 60. Rosters are often used as a mechanism to favour one employee over another. In these scenarios, the lion's share of penalty rates and weekend work can be unfairly and inequitably allocated to favoured staff. The rosters are also used as a mechanism to maintain insecure work.
- 61. The CPSU submits that the notice period in 25.5 should be increased to a minimum of 4 weeks notice.
- 62. Regarding the fairness of rosters, which is associated with secure work, gender equity, objectives, the CPSU has previously through its state union in NSW confirmed a more supportive structure of rostering principles that was contained in the copied state award utilized in the sector on transfer of workers from government to privatized disability providers.⁶

Recommendation: That the notice period in 25.5 should be extended to a minimum of 4 weeks notice.

Recommendation: A new roster clause is inserted as per NSW ADHC Rostering Principles as determined in *Re Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015*; ; *Re Crown Employees Ageing, Disability and Homecare - NSW Department of Family and Community Services (Community Living Award) 2015 [2017] NSWIRComm 1058 (30 August 2017)*

9. Availability and guaranteed regular hours - discussion question: Are there any specific variations

⁶ *Re Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015*; ; *Re Crown Employees Ageing, Disability and Homecare - NSW Department of Family and Community Services (Community Living Award) 2015 [2017] NSWIRComm 1058 (30 August 2017)*

to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

63. See above in response to Discussion question 1.

10. Overtime, TOIL, and make-up time – discussion question: Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

64. See above with regards to sleep-overs in discussion question 6.

11. On-call and recall to duty - discussion question Are there any specific variations to on-call or recall to duty provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

65. On Call provisions are rarely used in the areas of the disability sector where our members work. The use of casuals and the minimum 2-hour roster means that typically the on call provisions are circumnavigated

66. The use of split shifts or broken shifts as referred to in the Award are of an increasing concern. In group homes disability support workers are “expected” to be available if a client is absent from day programs but is generally not paid for being available, and only if required to attend a shift.

67. Disability Providers are factoring in the reduced cost of not requiring employing staff whilst also not paying an on call allowance. As the workforce is casualized, the employer can more often than not get away with this, as the workers are not willing to advocate against the unfairness, or not entitled to allowance as the worker has not commenced their casual contract.

68. The splitting or breaking of the shift is being used to transfer risk to the worker, and usually not enabling the worker to undertake work with another employer during the period between their split shift. In a group home environment, it is common for workers to be asked to stay due to a client deciding to remain at home from day programs.

69. Additionally working split shifts is a significant expense for regional members who may have to travel significant distances at great expense to attend work several times per day.

Recommendation: That Split shifts clause **25.6 Broken Shifts** is removed from the Award.

Recommendation: In the Alternative, if the Commission is unwilling to remove broken shifts, then an appropriate allowance should be provided to ensure that the worker is not financially disadvantaged for being available.

12. Travel time - discussion question: Are there any specific variations to travel time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

70. This is an issue of great importance to our members who work in regional areas and is likely to be a key factor for retention of workers in the industry.

71. Travel time is also combined with excessive fuel costs, as there is minimal available public transport regionally.

72. Broken shifts, combined with two-hour minimum shifts means that workers can effectively spend more than they earn traveling and from work due to the low rate of pay and cost of living expenses.

73. In regional areas, travel time may present a work health and safety issue as most providers do not have fatigue management policies. A worker employed on an afternoon shift and subsequent sleepover shift (whose sleep may have been disturbed a number of times by clients), then drives home may pose a risk to self and others.

Recommendation: Travel time for work should be paid in all circumstances,

Recommendation: Two separate allowances should be developed for:

- a) Any worker required to work less than 4 hours
- b) Any worker required to work a broken shift.

13. Annual leave - discussion question: Are there specific variations to annual leave provisions in modern awards, for example annual leave at half pay, that are necessary to ensure they continue to meet the modern awards objective?

74. As discussed above in the introduction regarding parties to the Award, there is only funding to providers for 4 weeks annual leave from the NDIA. The Award pays an additional week for shift work but providers receive no funding for this extra week.
75. Additionally, other industries have additional leave, up to 6 weeks for shift work, and extra weeks annual leave if a worker works in remote areas.
76. The CPSU has a drafted clause to improve access to annual leave loading to reduce the inequity associated with non-payment of 17.5% annual leave loading where an employee does not take annual leave in any year of employment.
77. Night Shift Work has been listed by the WHO as increasing the risk of cancer⁷, and other research has connected shift work to cardiovascular conditions, weight gain and other deleterious effects on human health. The SCHADS Award does not pay adequately for the worker to suffer these side effects of a rotating shift work for a prolonged basis ., Appropriate compensation should be added into the award such as NDIA fully funded SCHADS Award required additional annual leave.

Recommendation: Based on other modern and state awards, options to increase annual leave for shift workers to 6 weeks and look at replicating remote area increased annual leave in compensation.

Recommendation: That the Annexure B is incorporated to improve access to annual leave loading.

14. Personal/carer's leave - discussion question Are there any specific variations to personal/carer's leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Personal/carers leave entitlements are inadequate when shift workers need access to services the rest of the community enjoy during a 9-5 working day. Splitting personal leave from carers leave with a commensurate increase in paid days should be introduced to the SCHADS Award.

15. Definition of immediate family – discussion question Noting the Work and Care Final Report Recommendation 17, that the definition of immediate family should be expanded, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

78. We support the submission of the ACTU.

⁷ World Health Organisation, IARC Monographs Volume 124: Night Shift Work, <https://publications.iarc.fr/593>

16. Unpaid carer's leave – discussion question: Having regard to the Productivity Commission's suggestion for more flexible working arrangements as an alternative to extended unpaid carer's leave, are there any specific variations in the modern awards that are necessary to ensure they continue to meet the modern awards objective?

79. We support the submission of the ACTU.

17. Personal/carer's leave - discussion question: Noting Senate Committee Recommendation 18, to consider separating personal/carer's leave entitlement, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

80. We support the submission of the ACTU.

18. Ceremonial leave – discussion question: Are there any specific variations to ceremonial leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective? 19. Other variations to modern awards? Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?

79. We support the submission of the ACTU.

19. Other variations to modern awards? Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?

Gender Equity

80. Classification 2.4 level is the current maximum that most disability support workers can access. CPSU members will have to wait a number of years from their copied state award expiry, until the wages of the SCHADS Award catches up via the Fair Work Commissions annual wage review. This is an area whereby the NDIA will only fund pay up until level 2.4 classification, despite the level of work available and worker undertaking the work, previously conducting work at a level equivalent of 3.4 prior to privatization.

81. The state award provided for annual wage increments which encouraged the attraction and retention of workers. There is no provision for a career path in the SCHADS Award which introduces transiency to the sector. Without a career path built into the SCHADS Award, workers are less inclined to stay with the provider who also loses out in the investment in training it provides to the worker.

82. This restriction to hold back several thousand transferred workers from a pay rise for a number of years, as their access to the copied state award indexation halts until the SCHADS catches up. It is likely to lead to ongoing gender gap on payments to similar work in other industries and loss of good people from the already short labour supply.

83. There are a number of provisions that can make working in this industry easier to balance work and care. These include adding draft provisions for:

Annexure D: Emergency and Disaster Organisations Volunteers

Annexure E: Menstruation and Menopause leave and support

Annexure F: Gender Affirmation Leave

Annexures

Annexure A: Team Meetings

Annexure B: Sleepovers

Annexure C: Annual Leave Loading

Annexure D: Emergency and Disaster Organisations Volunteers

Annexure E: Menstruation and Menopause leave and support

Annexure F: Gender Affirmation Leave

Annexure A

CPSU NSW - SCHADS - Team Meetings – Draft clause

1. Team meetings

- 1.1. Team meetings are an important part of providing support to NDIS participants. Team meetings also provide an opportunity for inclusiveness in the workplace. Team meetings are an opportunity for management to consult with staff about workplace changes.
- 1.2. Attendance at team meetings is mandatory for permanent full-time and part-time Supported Independent Living employees.
- 1.3. Dates for team meetings will be rostered with appropriate consultation. Dates for the calendar year will be set and notified to all employees by 31 January each calendar year.
- 1.4. Where practical casual employees who work consistent hours at the service should be invited to attend a team meeting at least three times a year to ensure consultation with these employees.
- 1.5. Team meetings will be rostered for a minimum period of 3 hours. Team meetings are on paid time and all staff present should be recorded for payroll purposes.
- 1.6. Employers will ensure that a request for agenda items is sent out to all employees at the site a minimum 7 days before the team meeting to ensure facilitate consultation of matters important to the staffing group are received, discussed and considered.
- 1.7. Provision will be made for staff to attend via online meetings such as MTeams or other videoconferencing facilities and must follow an agreed Online Meeting Etiquette.

Annexure B

Sleepovers

- a. A sleepover means an employee is required to sleep overnight on the employer's premises.
- b. Employees are usually required to be on the premises during sleepovers to attend to emergency situations or unforeseen circumstances.
- c. The span for a sleepover will be a continuous period of eight hours.
- d. An employee performing sleepover work will be paid an allowance equivalent to eight (8) hours pay at the employees ordinary hourly rate.

Standard facilities to be provided to employees on sleepovers

- e. Employees on sleepovers should be provided their own facilities, separate to those of the residents, to minimise the potential of disturbing other staff and residents overnight.
- f. An employee performing sleepover work will be provided with exclusive use of the following facilities:
 - i. a lockable sleepover room separate from client areas. The room must be secure and allow Staff to view outside the sleepover room without opening the door.
 - ii. a bed, with fresh, clean, and light linen. The bed must not have been used by residents and clients.
 - iii. a telephone and/or other emergency communication equipment so that assistance may be summoned if required.
 - iv. a fridge for storing meals.
 - v. a microwave oven for heating up of meals.
 - vi. tea and coffee making facilities.
 - vii. Separate toilet and showering amenities within the unit for the purposes of personal hygiene.
- g. Employees will be provided the facilities as detailed above on each night they perform sleepovers.
- h. There will be no board, lodging or any other fees charged to employees on sleepovers for use of the above facilities.
- i. Employee sleepover facilities must not be used by residents.

Disturbances during sleepovers

- j. A sleepover will only be implemented in circumstances where there is a reasonable expectation that an employee will have 8 hours of uninterrupted sleep.
- k. The use of any technological monitoring devices (including but not limited to baby monitors, mattress and/or door alarms) is an indicator that staff disturbances are to be expected on a sleepover shift.
- l. If an employee has been disturbed during a sleepover the employee will be paid:
 - i. If disturbed to perform any necessary work, the employee will be paid at overtime rates in addition to the sleepover allowance.
 - ii. If disturbed by clients on two or more occasions, but not to perform any necessary work, the employee shall be paid as for an active night shift, in lieu of the sleepover allowance.

- iii. If disturbed by clients on two or more occasions to perform any necessary work, the work shall be paid for at overtime rates, with a minimum payment of an amount equal to the rate for an active evening shift, in addition to the sleepover allowance.

Employee initiated Sleepover reviews

- m. A review of sleepover arrangements at a site can be requested by an employee at any time.
- n. An employee can request a review of the appropriateness of sleepover arrangements for various reasons which may include, but are not limited to:
 - i. An employer wishes to introduce technological monitoring devices during sleepovers due to the evolving circumstances of a resident.
 - ii. Monitoring devices indicate that disturbances will occur overnight, and active nightshifts are more appropriate support for residents.
 - iii. a pattern emerges (or is expected to arise) where an employee is not getting an opportunity to sleep for 8 hours.
- o. Circumstances that may give rise to a change in the customary sleepover pattern, or an expectation that the sleepover will be interrupted, include but are not limited to:
 - i. A new service user transitioning into a residence.
 - ii. Illness or evolution of a resident's health conditions.
 - iii. Change in the behaviour pattern of a resident.
 - iv. Internal or external environmental factors.
 - v. Other circumstances resulting in the continued interruption of sleepovers.
- p. An employer will consider the employee's request in a timely manner and the review process will take no longer than 20 calendar days for preliminary options to be determined.
- q. Once preliminary options have been determined, consultation with affected staff and their union representatives will occur. At the completion of consultation, an employer may make permanent or temporary, short term or long term changes to sleepover arrangements at the site.
- r. If the employer does not consider there is a need for a change to the existing sleepover arrangements, written reasons will be provided to the employee who raised the request for review.
- s. Should failure to agree to a consensus on sleepover arrangements remain, the issue can be escalated via the disputes resolution provisions of clause <insert number> of the Award.

CPSU NSW - SCHADS – Annual Leave Loading – Draft clause

31.3 Annual leave loading

- (a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
 - (i) an annual leave loading of 17.5% of their ordinary rate of pay; or
 - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.
- (c) Annual leave loading shall be paid on the first occasion in a leave year, other than the first leave year of employment, when an employee takes at least two (2) consecutive weeks recreation leave. Where an employee does not have at least 2 weeks recreation leave available, the employee may use a combination of recreation leave and any of the following: public holidays, flex leave, extended leave, leave without pay, time off in lieu, rostered day off. The employee shall be paid the annual leave loading for such period, provided the absence is at least 2 weeks.
- (d) If at least two weeks leave, as set out in paragraph 78.6.1 of this subclause, is not taken in a leave year, then the payment of the annual leave loading entitlement for the previous leave year shall be made to the employee as at 30 November of the current year.

Annexure D

CPSU NSW – SCHADS Award – Emergency and disaster management volunteers

1. Emergency and disaster management organisations volunteers leave and support
 - 1.1. Emergency volunteers and volunteer members of safety organisations, which may include, but are not limited to, the following organisations:
 - Bushwalkers' Federation;
 - Cave Rescue Association;
 - NSW Volunteer Fire Brigade;
 - Public Service Support Group;
 - Rural Fire Services;
 - State Emergency Services;
 - Volunteer Coastal Patrol;
 - Volunteer Rescue Association of NSW
 - Wireless Institute Civil Emergency Network;

may be granted Emergency and Disaster Volunteer Leave of up to 5 days in any period of 12 months for the purpose of assisting as volunteers in one of these organisations.
2. Declared emergencies
 - 2.1. If a situation arises requiring a major operational response, or an emergency is declared under the relevant sections of the *State Emergency Service Act 1989*, the *Rural Fires Act 1997* or under any other relevant legislation or by the relevant State Premier or territory Chief Minister, employees who volunteer to assist will be granted Emergency and Disaster Volunteer Leave with no upper limit.
 - 2.2. Leave granted under this clause does not count towards the 5 day upper limit specified in "*1.1 Emergency and disaster management organisations volunteers*"
3. Proof of attendance at emergencies
 - 3.1. An application for leave must be accompanied by a statement from the local or Divisional Controller, the Fire Controller, Deputy Fire Controller or the Police, certifying the times of attendance.
 - 3.2. The leave application should indicate the period and area of attendance, together with the name of the organisation to which the volunteer member belongs.
4. Rest periods
 - 4.1. If a volunteer employee remains on emergency duty for several days, the employer will grant Emergency and Disaster Volunteer Leave to allow reasonable time for recovery before returning to duty.
 - 4.2. If a volunteer employee assists in a rescue at a time such that it would be unreasonable to expect them to report for duty at the normal time, the employer will grant up to 1 day Emergency and Disaster Volunteer Leave for rest.

- 4.3. In the emergency referred to in the preceding two subclauses is not a declared emergency, in accordance with “*1.2 Declared emergencies*”, the leave granted is included in the general 5 day annual limit prescribed in “*1.1 Emergency and disaster management organisations volunteers*”.
5. State Emergency Service (SES) training courses
 - 5.1. If the Director of State Emergency Services considers it essential that a volunteer employee attend a course of training or lectures, the employer should make every effort to release the employee from duty. If the employee is so released, the necessary absence from work is regarded as being on duty.
 - 5.2. The Director of the State Emergency Services may nominate volunteer employees for attendance at courses of training or lectures when their attendance is not regarded as essential. In these circumstances special leave may be granted for the time employees are absent from duty.
 - 5.3. A certificate of attendance is not necessary. The SES will advise the employer whether attendance is required and any non-attendance will be reported to the employer.
 - 5.4. The State Emergency Service will advise the employer whether attendance is required and any non-attendance will be reported to the employer. Approval of leave under this clause is subject to employer convenience and written confirmation of attendance.
6. Rural Fire Service (RFS) and bush fire fighting training courses
 - 6.1. Emergency volunteers nominated to attend courses approved by the Rural Fire Service (or by organisations recognised by the RFS) are to be granted the necessary Emergency and Disaster Volunteer Leave to attend, up to a maximum of 10 working days in any period of 12 months.
 - 6.2. Applications are to be supported by written approval of the Rural Fire Service. Approval of leave under this clause is subject to employer convenience and written confirmation of attendance.
7. Payment of higher duties allowance during voluntary emergency service
 - 7.1. Employees who commence relief or who are due to commence relief in a higher graded position and then volunteer to assist the SES, RFS or other disaster and emergency management organisation during bushfires, floods and so on, may be eligible to receive the higher duties allowance for the period of time volunteering while on operational events.

Annexure E: Menstruation and Menopause leave and support

CPSU NSW - SCHADS - Menstruation and Menopause Leave and Support – Draft clause

1) Menstruation and Menopause Leave and Support

- a) In recognising the experiences of menstruation and menopause can be debilitating and that stigma and taboo may surround these experiences modern workplaces should provide a commitment to support staff who have negative health experiences during menstruation and menopause and to facilitate reasonable self-care on these occasions.
- b) Employers must approve any reasonable request from an employee who is experiencing problems during menstruation or menopause including:
 - i) The opportunity to work under temporarily changed circumstances that encourage the comfort of the employee (for example, resting in a quiet area or a temporary arrangement to work from home); or
 - ii) Any other appropriate measure including those available under existing provisions for flexible work arrangements.
- c) If an employee is unable to work if experiencing symptoms of menopause or menstruation, and where the options available under clause 1(b) above are not viable, employees (including part time and casual employees) shall be entitled to paid Menstruation and Menopause Leave up to a maximum of 36 days per year.
- d) A medical certificate or any other evidence will not be required for an employee to access paid Menstruation and Menopause Leave.
- e) Menstruation and Menopause Leave will be:
 - i) available in full on the anniversary of an employee's employment.
 - ii) accrued from year to year should any remaining leave be untaken.
 - iii) paid on a pro rata basis depending on the employee's ordinary hours of work at the time of applying for leave.
 - iv) forfeited by the employee on termination of their employment.

Annexure F: Gender Affirmation Leave

CPSU NSW - SCHADS – Gender Affirmation – Draft clause

1. Gender Affirmation Clause number.
 - 1.1. Modern Australian workplaces should be committed to providing a supportive and inclusive environment for transgender and gender diverse employees and recognises the importance of providing support for employees who choose to undergo gender affirmation or transition.
 - 1.2. Employers must recognise that there is no legal requirement for an employee to inform management or anyone else in the workplace of their intention to affirm their gender. Therefore, for the purposes of accessing a Gender Affirmation leave entitlement, the employee may be required to provide such evidence as would satisfy a reasonable person that the leave is being used for the purpose intended by this clause.
2. Gender Affirmation leave can be accessed for purposes related to the affirmation of a staff member's gender or gender transition which may include (but is not limited to):
 - 2.1. social affirmation (including changing the employee's name and pronouns, and adopting the dress and style of presentation the employee deems appropriate);
 - 2.2. medical affirmation (including surgery and/or hormone therapy, attendance at medical and/or counselling appointments, and rest and recovery from medical procedures); and
 - 2.3. legal affirmation (including legally changing the Employee's name and/or gender marker on personal identification documents such as the Employee's passport, birth certificate, driver licence, and banking documentation).
3. A staff member who is undergoing gender affirming care and/or processes is entitled to the following paid leave entitlements:
 - 3.1. 60 days paid gender affirmation leave is available after 12 months of continuous employment for any purpose related to gender affirmation. To access this 60 day paid leave entitlement, the staff member will be required to provide such evidence as would satisfy a reasonable person that the leave is being used for the purpose intended by this clause. Such evidence may be a medical certificate from a treating practitioner or a letter from a legal practitioner.
 - 3.2. 30 days paid gender affirmation leave is available after 12 months of continuous employment for the purpose of undergoing a surgical procedure relating to gender affirmation. To access this 30 day paid leave entitlement the staff member will be required to provide evidence that would satisfy a reasonable person that a surgical procedure is being undertaken as part of gender affirming care. This evidence does not need to identify the actual nature of the surgery itself.
 - 3.3. Paid leave entitlements as outlined in 4.1 and 4.2 can be accessed in any order.
 - 3.4. Periods of paid gender affirmation leave will count as service for all purposes.
 - 3.5. An Employee may take gender affirmation leave in one block or in lesser periods as required.
4. An Employee must give notice to their employer of an intention to take gender affirmation leave as soon as practicable. Such notice must:
 - 4.1. advise the Employer of the period of leave proposed to be taken; and
 - 4.2. be accompanied by evidence that would satisfy a reasonable person that the leave is being taken for gender affirmation purposes.
 - 4.3. Such evidence may include a medical certificate or letter from the Employee's Registered Health Practitioner or statutory declaration by the Employee.

5. Any application for leave without pay or sick leave without pay pursuant to subclauses [TBC] or [TBC] must also be accompanied by the evidence referred to in subclause 4.3.
6. For the avoidance of doubt, Gender Affirmation Leave is provided in addition to any other leave that may be available to the staff member, including Personal Leave.
7. Gender Affirmation Leave does not accrue, and unused leave is not paid out on termination. The leave described above is available to the employee to utilise as needed while they remain an employee.
8. A staff member is entitled to take up to 12 months of unpaid leave after 12 months service with their Employer. The Employee should give at least 8 weeks' notice to their Employer of their intention to take extended unpaid leave and make this application consistent with the requirements in clause [TBC].
9. If the staff member has less than 12 months of service with their Employer, they may still make an application for unpaid leave where required.
10. The leave will only be available to permanent full time or part time staff Employees.

Other related matters

11. In addition to the above, Employers will support Employees who are affirming their gender by:
 - 11.1. Updating their employee records promptly, including email, website, staff directories and images, to reflect their name, title, gender and any other details requiring updating as requested by the employee;
 - 11.2. Providing a new ID card, where requested;
 - 11.3. Notifying the employee's manager, colleagues and students, where and in the manner requested by the employee;
 - 11.4. Providing trans and gender diverse awareness training for managers, supervisors and colleagues if requested by the employee;
 - 11.5. Respecting the right of the employee's privacy by not disclosing any information about the employee's trans or gender diverse status without their consent;
 - 11.6. Ensuring safe access to bathrooms and facilities that accord with the employee's gender;
 - 11.7. Employers will protect the privacy and maintain confidentiality of information given by an Employee under this clause. Employers will ensure that, unless authorised by the employee, personal information, including gender information will be kept strictly confidential;
 - 11.8. In line with Human Rights and Anti-Discrimination legislation, Employers must be committed to inclusive workplaces that will not tolerate any discrimination, bullying, harassment or disfavour based on gender identity.